

BASIS STATEMENT

Amendments to Chapter 305, Section 20

The proposed amendments to existing Section 20 of Chapter 305 contain changes to:

- (1) Comply with the statutory requirement at PL 2007, ch. 290(16)(in part) to include provisions in permit by rule (PBR) that (a) incorporate standards for activities consisting solely of cutting or removal of vegetation within shorebird roosting and feeding buffers as specified in statute at 38 M.R.S.A. § 480-CC(2)(A) and (B), and (b) provide for an expansion of up to 10% of an existing development area within a shorebird feeding area.
- (2) Provide for PBR standards for certain cutting activity within inland waterfowl and wading bird habitat, and for an expansion of up to 10% of an existing development area within inland waterfowl and wading bird habitat.
- (3) Update definitions for “shorebird nesting, feeding, and staging areas” and “shorebird feeding area”, and “shorebird roosting area” to be consistent with recent amendments to 38 M.R.S.A. §480-CC, Significant wildlife habitat; shorebird feeding and roosting areas.
- (4) Corrections as indicated at the end of this basis statement.

A public hearing was scheduled on November 1, 2007, and the comment period closed November 12, 2007. No persons testified at the hearing. Two written comments were submitted, and are summarized below.

1. Comment:

In the definitions, the existing text refers to a 250-foot zone surrounding shorebird nesting, feeding, and staging areas. But this past summer, the zone was revised. Shorebird feeding areas include the intertidal zone and a 100-foot adjacent buffer area. Why does the text refer to a single 250-foot zone? Is this an oversight? (Bob Allison)

Response:

Yes, it was an oversight. In response to this comment, the definitions have been updated to be consistent with the statutory amendments codified at 38 M.R.S.A. §480-CC(1).

2. Comment:

Maine Audubon was very involved in the legislative process when the authorizing legislation for the changes, LD 1477,¹ was passed. Maine Audubon supported LD 1477. I have reviewed the legislation and the proposed PBR changes and find them to be consistent.

Our one concern was that section 20(A)(2) goes beyond the legislation to address expansions not only in shorebird feeding areas but also in high and moderate value inland waterfowl and wading bird habitats. You have assured me that the Department of Inland Fisheries and Wildlife is

¹ LD 1477 resulted in PL 2007, ch. 290.

supportive of this expansion to include these additional habitats in existing developed areas. We also understand that DIFW must sign off on any cutting or removal of vegetation in shorebird roosting areas as articulated in section 20(C)(4). This is very important as protection of this habitat type is essential. (Jennifer Burns Gray, Maine Audubon)

Response:

No changes necessary in response to this comment.

While developing the draft amendments, DEP staff raised the possibility of allowing for some cutting in high and moderate value inland waterfowl and wading bird habitat under permit by rule, if such cutting were appropriate. DEP staff approached staff of the Department of Inland Fisheries & Wildlife (DIFW) to ask whether it would be appropriate to allow some cutting under permit by rule in these habitats, and if so what cutting. As part of that discussion, it was asked whether the 10% expansion of a developed area in a shorebird feeding area, which was provided for in PL 2007, ch. 290, would also be acceptable for the inland habitats. IF&W's views on these issues were reflected in the proposed amendments.

CORRECTIONS

(1) As explained to the Board of Environmental Protection (BEP) and members of the public on November 1, 2007, there was an underlining error in the posted draft of the amendments. All of Section 20(C)(4) and (5) should have been underlined, because these paragraphs are all new text. In the draft to be considered by the BEP for adoption, this error is corrected.

(2) When the final review of the draft rule and basis statement was conducted by the Office of Attorney General, it was noted that the language in Section 20(C)(4) and (5) of the proposed rule amendments was not entirely consistent with 38 M.R.S.A. 480-CC(2), although the intent as stated in the notification form had been to incorporate standards for activities consisting solely of cutting or removal of vegetation within shorebird roosting and feeding buffers as specified in statute at 38 M.R.S.A. § 480-CC(2). The statute provides cutting standards for shorebird roosting and feeding *buffers*, but the proposed rule text specified cutting standards within shorebird roosting and feeding *areas*. Therefore "area" has been changed to "buffer" as shown in double-underline/double-strike below to correct this error and make the rule text consistent with the statute.

(4) Cutting or removal of vegetation within a high or moderate value inland waterfowl and wading bird habitat, or shorebird roosting ~~area~~ buffer, is limited to:

(a) Removal of a safety hazard; or

(b) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water.

Any cutting or removal of vegetation within a shorebird roosting buffer ~~area~~ under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

(5) Cutting or removal of vegetation within a shorebird feeding buffer ~~area~~ must meet the vegetative screening standards set forth in *Mandatory Shoreland Zoning*, 38 M.R.S.A. § 439-A(6). In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting² and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer.

A parallel correction in the applicability section (Section 20(A)(3)) was made as follows:

(3) This section applies to activities consisting only of cutting or removal of vegetation within high or moderate value inland waterfowl and wading bird habitat, or shorebird feeding or roosting buffer, ~~nesting, feeding and staging areas.~~

² *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 CMR 1000(15)(P) (chapter last amended May 1, 2006).